

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Family Educational Association Inc.	)	File Number EB-05-SJ-015
	)	
Licensee of Station WPLI	)	NAL/Acct. No.: 200532680002
Levittown, PR	)	
Facility ID # 11620	)	FRN 0010628246
	)	

**FORFEITURE ORDER**

**Adopted:** November 22, 2005

**Released:** November 28, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand six hundred dollars (\$5,600) to Family Educational Association Inc. (“Family”), licensee of station WPLI, in Levittown, Puerto Rico, for willful and repeated violation of Section 73.1350(a) of the Commission's Rules (“Rules”).<sup>1</sup> The noted violation involves Family’s failure to operate its station in accordance with the terms of the station authorization.

**II. BACKGROUND**

2. On April 21, 2005, as a follow-up to a previous inspection that uncovered a violation, agents from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) conducted an inspection of WPLI’s transmitter site located on the roof of the Atlantico Condominium at Naranjal Street, Levittown, Puerto Rico. The agents discovered that the station was operating with a non-directional antenna. The agents also found that the station was operating at an ERP of 26.4 watts on a horizontally polarized antenna, with no vertical component. The engineer for the station stated that the non-directional antenna was already in place when he was hired by the station in early 2005. On May 26, 2005, the owner of the station admitted that the non-directional antenna had been installed earlier in April. WPLI’s license requires that it utilize a directional antenna and operate at 34 watts on a horizontally polarized antenna and 100 watts on a vertically polarized antenna.

3. On August 24, 2005, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to Family in the amount of seven thousand dollars (\$7,000) for the apparent willful and repeated violation of Section 73.1350(a) of the Rules.<sup>2</sup> On September 22, 2005, Family submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

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<sup>1</sup>47 C.F.R. § 73.1350(a).

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532680002 (Enf. Bur., San Juan Office, August 24, 2005) (“*NAL*”).

### III. DISCUSSION

4. Section 73.1350(a) of the Rules<sup>3</sup> states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. On April 21, 2005, station WPLI was transmitting with a non-directional antenna (Telecom Radio Antenna model TFC1K) with no vertical component and an ERP of 26.4 watts horizontal. According to the terms of its station authorization, the station is licensed to operate with a directional antenna (ODD model ODD9308231G) and an ERP of 34 watts horizontal and 100 watts vertical. The station owner admitted that the station installed the non-directional antenna with no vertical component earlier in April.

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Family's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

6. In its response, Family argues that the proposed forfeiture should be reduced or canceled because the station intended only to use the non-directional antenna for a short period of time as a basis for testing the station's interference in preparation for the filing of a modification application. Family claims that the antenna was installed in early April, that the tests were intended to last, at most, a week and a half, and that it voluntarily disclosed to the San Juan Office that the tests would soon commence.

7. We do not find Family's arguments persuasive. By its own admission, Family intentionally installed and operated an antenna not authorized by its license for a period of at least two weeks.<sup>7</sup> The fact that Family may not have intended to operate this unauthorized antenna permanently is irrelevant in determining whether a violation occurred. We note that the station engineer made no mention of any such tests during the inspection on April 21, 2005 and that there is no record that the station notified the San Juan Office of its intention to conduct tests.

8. Moreover, Section 73.1690(b)(3) of the Rules states that modifications to transmission systems that would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized may only be made after the grant of a construction permit application.<sup>8</sup> No modification application has been filed with the Commission. Thus, based on the evidence before us, we find that Family willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Section

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<sup>3</sup>47 C.F.R. § 73.1350(a).

<sup>4</sup>47 U.S.C. § 503(b).

<sup>5</sup>47 C.F.R. § 1.80.

<sup>6</sup>47 U.S.C. § 503(b)(2)(D).

<sup>7</sup>We note that the station's engineer stated that the non-directional antenna was installed prior to his joining the station in early 2005.

<sup>8</sup>47 C.F.R. § 1690(b)(3).

<sup>9</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd

73.1350(a) of the Rules by failing to operate its station in accordance with the terms of the station authorization.

9. Family also requests a reduction of the forfeiture based on its good faith efforts to comply and its history of compliance with the Rules. Family claims that it immediately shut down the test antenna when it was informed by the agent of the violation. Corrective action taken to come into compliance with the Rules and cooperation with agents is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>11</sup> However, we have reviewed Family's record and conclude a reduction of the forfeiture to \$5,600 based on history of compliance is appropriate.

10. We have examined Family's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we reduce the forfeiture proposed for this violation to \$5,600, based on Family's history of compliance with the Rules.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Family Educational Association Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for willfully and repeatedly violating Section 73.1350(a) of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>12</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>13</sup>

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4387 (1991).

<sup>10</sup>The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>11</sup>See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>12</sup>47 U.S.C. § 504(a).

<sup>13</sup>See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Family Educational Association Inc. at its record of address and to its attorney, William D. Silva, Law Offices of William D. Silva, 5335 Wisconsin Ave., NW, Suite 400, Washington, DC 20015-2003.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau